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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

COCKS, JOSIAH C

ART UNIT PAPER NUMBER

3749

DATE MAILED: 01/27/2004

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/039,203

Applicant(s)

ARONSON ET AL.

Examiner

Josiah C. Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on amendment filed 11/6/03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-69 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 57-62 and 66-68 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-15, 17-39, 41-49, 51-56, 63-65 and 69 is/are rejected.
- 7) ☒ Claim(s) 5, 16, 40, and 50 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Receipt of applicant's amendment filed 11/6/03 is acknowledged.

Claim Objections

2. Claim 62 is objected to because of the following informalities: In line 2, "pathpath" should read --path--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 22-35, 53-56, 63-65, and 69 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. These claims recite that the second path is at an oblique angle to the first path. However, applicant's specification does not support the use of the term "oblique" to describe the angle. Applicant's specification only supports that the paths are related by an angle "greater than 30° and less than about 90°... and preferably an angle of about 50°" (see specification p. 13, paragraph 0048).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1, 2, 4, 6, 8-13, 15, 17, 19-21, 36, 37, 39, 41, 43-47, 49, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Saito et al.* (US # 6,022,212) (cited by applicant in IDS filed 3/12/02) (hereinafter "*Saito '212*") in view of *Kim* (US # 5,462,432) (cited by applicant in IDS filed 3/12/02).

Saito '212 discloses in Figures 1-24 a method and an igniter substantially as described in applicant's claims 1, 2, 4, 6, 8-13, 15, 17, 19-21, 36, 37, 39, 41, 43-47, 49, and 52 including a stop member (25b), housing (6), fuel reservoir (7), nozzle (10) actuating assembly for releasing

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and igniting fuel (8), trigger (20), trigger guard (6a) and a trigger lock/slider (25) that is coupled to the trigger and is spring biased via spring (26). The trigger lock/slider (25) functions to be moved along a path from a position where the lock interferes with the trigger (see Figs. 1 and 4A) upwards along a first path at an angle greater than 30° to a position where the trigger is free to move in a second linear path (see Figs. 3A, 3B, and 4B) wherein the actuating assembly is activated for releasing fuel and igniting the fuel via igniter (22).

Saito '212 possibly does not disclose that the slider is moveable along the trigger body or that the angle of the second path is about 50°.

Kim teaches an igniter in the same field of endeavor as *Saito '212* wherein the igniter of *Kim* shows a trigger (2) including a slider portion (3) that functions to lock and unlock the trigger and is moveable along the trigger body (see Figs. 1 and 2).

In regard to the limitations of the claims specifying the angle of the second path as about 50°, this angle would be dependent upon such factors as the angle of the trigger body with respect to the housing and is regarded as simply a matter of design choice absent the showing of any new or improved results over the prior art of record.

Therefore, in regard to claims 1, 2, 4, 6, 8-13, 15, 17, 19-21, 36, 37, 39, 41, 43-47, 49, and 52, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the igniter of *Saito '212* to incorporate the slider location and path of movement as taught by *Kim* for the desirable purpose of providing a locking device that is difficult for young children to operate and prevents inadvertent ignition (see *Kim*, col. 2, lines 22-37).

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8. Claims 3, 7, 14, 18, 38, 42, 48, and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Saito* '212 in view of *Kim* as applied to the claims in item 5 above, and further in view of *Yamasaki* (US # 5,531,591).

Saito '212 in view of *Kim* teach all the limitations of claims 3, 7, 14, 18, 38, 42, 48, and 51 except that the trigger path is an arcuate path or the trigger boy is pivotably attached to the housing.

Yamasaki teaches an lighter in the same field of endeavor as both *Saito* '212 and *Kim* wherein the lighter of *Yamasaki* includes a trigger (5) and lock member (6) wherein the trigger that moves in an arcuate path and is pivotably attached to a housing (see Fig. 5).

Therefore, in regard to claims 3, 7, 14, 18, 38, 42, 48, and 51, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the lighter of *Saito* '212 to incorporate the arcuate and pivotal attachment of *Yamasaki* as pivotal motion of the trigger is regarded in the art as an effective means for engaging an ignition device and releasing fuel via a valve mechanism (see *Yamasaki*, col. 2, lines 42-62).

Response to Arguments

9. Applicant's arguments filed 11/6/03 in regard to the claims noted above have been fully considered but they are not persuasive. Applicant argues that neither *Saito et al.* nor *Kim et al.* show a portion of the slider located inside the housing. Applicant contends that no part of the safety button (3) of *Kim et al.* including the leg (5) is positioned within the housing when the safety button is in the locked position (see p. 16 of the response). This is argued to be distinct from applicant's claims because, "the present application claims a portion of the slider to be

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located inside the housing (Refer to Figure 9B) in interfering relationship with the stop member within the housing, and remains within the housing when the trigger is depressed (Refer to Figure 10B).” However, as noted in Figure 3 of *Kim et al.* portions of housing (1) are shown to extend above leg (5) on one side of button (2). The examiner considers that, broadly interpreted, leg (5) would be regarded by a person of ordinary skill in the art as being positioned “within” housing (1). Further the examiner considers that when *Saito et al.* is modified to include the safety button mechanism of *Kim et al.* the combination would also be regarded as showing a portion of leg (5) within the housing.

Applicant also argues that *Saito et al.* and *Kim et al.* are not properly combinable because one is directed to a lighting rod device and the other to a conventional cigarette lighter. However, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). The examiner considers that lighting rods and conventional lighters are analogous art and that a person of ordinary skill in the art would consider that *Kim et al.* suggests that a safety button located on a trigger portion of a lighter would be desirable in providing a safety mechanism that is difficult for young children to operate and prevents inadvertent ignition. (see *Kim et al.*, col. 2, lines 22-37).

Allowable Subject Matter

10. Claims 57-62 and 66-68 are allowed.

11. Claim 5, 16, 40, and 50 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. The following is a statement of reasons for the indication of allowable subject matter:

In regard to claims 57-62 the prior art does not teach or suggest the igniter have the structure recited in these claims including that the trigger moves along a first path toward a first end of the housing and the slider moves along the trigger body along a second path towards the second end of the housing.

In regard to claims 66-68, the prior art does not teach or suggest the igniter have the method recited in these claims including that the trigger moves along a first path toward a first end of the housing and the slider moves along the trigger body along a second path towards the second end of the housing.

In regard to claims 5, 16, 40, and 50, the prior art does not teach or suggest the igniters and methods of the independent claims on which these claims are dependent and further including a limitation that the second path is at an angle of about 50° to the first. This angle contributes towards preventing a young child from operating the lighter.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (703) 305-0450. The examiner can normally be reached on weekdays from 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (703) 308-1935. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

jcc
January 23, 2004



JOSIAH COCKS
PATENT EXAMINER
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